

Salvador : groupe criminel Mara Barrio 18 (M-18) et protection de l'État

Renseignement de l'analyse-pays de l'OSAR

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Organisation suisse d'aide aux réfugiés (OSAR)
Case postale, 3001 Berne
Tél. 031 370 75 75
Fax 031 370 75 00
Courriel : info@osar.ch
Internet : www.osar.ch
CCP dons : 10-10000-5

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Ce rapport repose sur des renseignements d'expert-e-s et sur les propres recherches de l'Organisation suisse d'aide aux réfugiés (OSAR). Conformément aux standards COI, l'OSAR fonde ses recherches sur des sources accessibles publiquement. Lorsque les informations obtenues dans le temps imparti sont insuffisantes, elle fait appel à des expert-e-s. L'OSAR documente ses sources de manière transparente et traçable, mais peut toutefois décider de les anonymiser, afin de garantir la protection de ses contacts.

1 Introduction

Les questions suivantes sont tirées d'une demande adressée à l'analyse-pays de l'OSAR :

1. De quelles informations dispose-t-on sur le gang Mara Barrio 18 (M-18) ?
2. Quelle protection l'autorité policière du Salvador offre-t-elle en cas de plainte contre le gang Mara Barrio 18 (M-18) ?
3. Le système judiciaire salvadorien est-il en mesure d'offrir une protection aux victimes du gang Mara Barrio 18 (M-18) pour des délits tels que l'extorsion ?
4. Une personne recherchée par un gang, par exemple pour avoir dénoncé ses activités criminelles, peut-elle trouver un refuge sûr dans une autre partie du pays ?

L'analyse-pays de l'OSAR observe les développements au Salvador depuis plusieurs années.¹ Sur la base de ses propres recherches ainsi que de renseignements transmis par des expert-e-s externes, elle apporte les réponses suivantes aux questions ci-dessus.

2 Le groupe Mara Barrio 18 (M-18)

Le groupe Mara Barrio 18 est composé de deux factions. Il fait partie, avec la Mara Salvatrucha (MS-13), des deux principaux gangs du pays. Ensemble ils compteraient jusqu'à 70 000 membres actifs. Bien armé et violent, le Mara Barrio 18 est impliqué dans de multiples activités criminelles. Selon l'Agence de l'Union européenne pour l'asile (EUAA), le *18th Street Barrio*, aussi appelé *Barrio 18*, fait partie, avec la *Mara Salvatrucha* (MS-13) des deux principaux gangs criminels du Salvador. Mara Barrio 18 comporte deux factions qui sont les *Revolucionarios* et les *Sureños*. Les deux principaux gangs du pays sont engagés dans des activités criminelles, telles que le trafic de drogue, les enlèvements, la traite des êtres humains, l'exploitation sexuelle, les assassinats, le racket et l'extorsion. Bien armés et violents, ces deux gangs seraient responsables de la plupart des homicides commis dans le pays. Le pays compterait environ 60 000 membres de gangs actifs. Si on rajoute les collaborateurs-trices et les membres de famille, le chiffre atteindrait environ 400 000, chaque membre disposant d'un réseau d'au moins six collaborateurs-trices ou membres de sa famille (EUAA, 10 mars 2022). Selon la *Commission de l'immigration et du statut de réfugié du Canada* (IRB), qui cite des informations d'Al-Jazeera et d'Insight Crime, le MS-13 et le Mara Barrio 18 compteraient ensemble entre 60 000 et 70 000 membres (IRB, 2 décembre 2022). L'EUAA indique qu'en 2017, les tribunaux salvadoriens ont désigné les deux gangs de groupes terroristes. Les dirigeants sont pour la plupart en prison, ce qui ne les empêche pas de continuer à diriger leurs activités. Selon l'International crisis group (ICG), cité par l'EUAA, ces dernières années les gangs auraient évolué et une nouvelle génération de chefs serait apparu dans la rue. Ces derniers seraient plus indépendants des chefs en prison et auraient avec eux des vues divergentes (EUAA, 10 mars 2022).

¹ www.osar.ch/publications/rapports-sur-les-pays-dorigine

Présence des gangs dans tout le pays et fort contrôle territorial via l'extorsion et les meurtres. De nombreuses familles quittent leurs maisons et quartiers pour tenter d'échapper à leur emprise. D'après l'IRB, qui cite des informations d'Al-Jazeera et d'Insight Crime, le MS-13 et le Mara Barrio 18 seraient présent dans 94 % des municipalités du pays (IRB, 2 décembre 2022). L'EUAA indique également que le Mara Barrio 18 est présent dans tout le pays et qu'il opère dans la plupart des municipalités. Les gangs, tels que le Mara Barrio 18, exercent un contrôle fort sur des communautés entières, notamment via des activités telles que les extorsions, les disparitions ou encore de fréquents meurtres. Citant Human Rights Watch (HRW), l'EUAA indique que des parties du territoire du Salvador, notamment des quartiers, sont sous le contrôle des gangs, mais que les résident-e-s dans l'ensemble du pays sont victimes d'extorsion de la part des gangs (EUAA, 10 mars 2022). Selon un rapport du Rapporteur spécial sur les droits de l'homme des personnes déplacées, présenté devant le *Conseil des droits de l'homme* (HRC), le contrôle et la violence exercés par les gangs sur la population, en particulier dans les quartiers pauvres, ont conduit de nombreuses familles à se résoudre à quitter leurs maisons. Ces personnes fuient les menaces, les fréquents homicides et l'extorsion, considérée comme un « impôt », qui s'applique aux particuliers aussi bien qu'aux petites entreprises (HRC, 23 avril 2018).

Possibilités très limitées de fuite interne pour les personnes menacées par des groupes criminels. Forte probabilité qu'une personne recherchée par un gang soit retrouvée. Selon l'*Agence des Nations unies pour les réfugiés* (HCR), les personnes qui fuient les menaces des gangs ont tendance à être victimes de déplacements multiples, notamment en raison du fait que peu de zones du pays échappent au contrôle des gangs. Si elles s'installent dans une zone sous contrôle du gang qui les menaçaient, alors elles restent sous leurs menaces. Si elles s'installent dans une zone contrôlée par un gang rival, alors elles peuvent finir dans son collimateur, car ce dernier pourrait ne pas accepter de nouveaux arrivants provenant d'une zone contrôlée par un gang rival. Le HCR souligne que lorsqu'une personne est recherchée par un gang, elle peut être retrouvée, même si elle a fui son domicile. En outre, il suffirait de peu pour subir des représailles de la part des gangs qui n'hésitent pas à tuer, souvent sans avertissements, les personnes qui résistent à leur autorité. Le HCR estime qu'en raison de la taille limitée du pays et de la capacité des groupes criminels à retrouver des personnes recherchées dans tout le pays, il est peu probable qu'une personne menacée puisse trouver un refuge sûr ailleurs dans le pays (HCR, mars 2016).

3 Protection de l'État

3.1 Mesures prise pour lutter contre le groupe M-18

Intense répression de la part des autorités. Durcissement des peines de prisons, y compris pour les personnes mineures. Abus de la part des forces de sécurité. Selon IRB, qui cite des informations de l'ICG, en réponse à la violence des gangs, le gouvernement a adopté une réponse répressive de grande intensité. Freedom House, également cité par l'IRB, indique que cette réponse « dure et militarisée » a donné lieu à certains abus, y compris des exécutions extrajudiciaires. Le gouvernement a notamment fait passer des lois qui ont durci de manière significative les peines pour les membres de gangs, les peines maximales de prison passant de neuf à 45 ans. Ce durcissement s'applique également aux personnes mineures qui peuvent être jugés comme de adultes pour les crimes les plus graves et qui sont

emprisonnés avec des adultes plutôt que dans des centres de détention pour personnes mineures (IRB, 2 décembre 2022).

Déclaration de l'état d'urgence en mars 2022, prolongé en février 2023. Suspension de certains droits constitutionnels fondamentaux. Plus de 66 000 personnes arrêtées, la plupart arbitrairement. Mauvais traitements et torture. IRB indique qu'en mars 2022, le Parlement a approuvé un état d'urgence en vertu duquel certains droits constitutionnels, tels que le droit à la liberté de réunion, le droit à avoir accès à un avocat ou le droit à être informé de la raison d'une arrestation, ont été suspendus. Par ailleurs, l'état d'urgence permet la détention administrative de plus de 72 heures. Cet état d'urgence a été prolongé en octobre 2022. Plus de 55 000 personnes auraient été arrêtées dans le cadre de l'état d'urgence (IRB, 2 décembre 2022). Selon *Amnesty International* (AI), depuis l'instauration de l'état d'urgence, qui a été encore prolongé en février 2023, l'État s'est rendu coupable de graves et systématiques violations des droits humains. Plus de 66 000 personnes ont été arrêtées, la plupart de manière arbitraire, un grand nombre ont été soumis à des mauvais traitements, y compris la torture, et à des disparitions forcées. Au moins 132 personnes sont décédées aux mains des forces de sécurité. AI dénonce un effort systématique et concerté entre les trois branches de l'État ainsi qu'une impunité généralisée et une absence d'obligation de rendre des comptes (AI, 3 avril 2023).

Efforts des autorités jugés globalement inefficaces, malgré des statistiques criminelles en baisse. 42 membres du Mara Barrio 18 condamnés en mars 2021 à de lourdes peines de prison. D'après Foreign Policy (FP), cité par l'EUAA, même si les statistiques officielles indiquent une baisse des activités criminelles dans le pays, il n'existe pas d'éléments concrets qui indiqueraient que les autorités aient réellement réussi à démanteler les structures criminelles à l'origine de la violence. Se référant aux informations de l'USDOS, l'EUAA indique également que les efforts des autorités pour limiter les actions criminelles des gangs à l'encontre de la population s'étaient généralement révélées inefficaces. L'USDOS pointe également du doigt le fait qu'il n'existe pas de base de données nationale sur les personnes disparues, ni de suivi ou de services adéquats pour prendre en charge les victimes de violence qui ont fui leurs maisons. En mars 2021, le bureau du procureur général a annoncé que 42 membres du Mara Barrio 18 avaient été condamnés pour des crimes tels que des homicides, l'extorsion, le trafic de drogue et des disparitions, avec des peines allant jusqu'à 472 ans de prison (EUAA, 10 mars 2022).

3.2 Protection de la police

Institutions faibles et corrompues. Capacité d'enquête très limitée. Peu de crimes font l'objet d'enquêtes. Manque de confiance de la population envers les forces de l'ordre. Protection souvent inexistante ou inefficace. Les gangs commettent souvent leurs crimes en toute impunité. Le *Congressional research service* (CRS) estime qu'historiquement, les institutions salvadoriennes sont faibles et corrompues et les institutions de la justice pénales sont sous-financées. Le CRS pointe en particulier du doigt la faiblesse des capacités d'enquête et une incapacité à poursuivre les officiers de police accusés de corruption et de violations des droits humains. En raison d'un manque de confiance dans la police, de nombreux citoyens et citoyennes ainsi que d'entreprises préfèrent faire appel à des sociétés de sécurité privées. Le gouvernement a également dû déployer des soldats de l'armée pour assurer la sécurité publique (CRS, 1^{er} juillet 2020). Selon *Vickie Knox*, chercheuse et analyste des droits humains, l'impunité est généralisée et la plupart des crimes ne sont pas poursuivis.

Parmi les facteurs favorisant cette impunité, elle cite d'une part une réticence de la population à signaler les crimes et d'autre part la faiblesse des institutions qui n'ont pas la capacité pour entreprendre les enquêtes ou les mener à bien (*Vickie Knox*, octobre 2019). D'après le rapport du Rapporteur spécial sur les droits de l'homme des personnes déplacées, le niveau de violence dans le pays est tel que même les crimes les plus graves, comme les homicides, ne font souvent pas l'objet d'une enquête. Cela conduit à un manque de confiance de la population envers les forces de l'ordre et le système judiciaire. Les lois ne sont souvent pas appliquées, notamment en raison de sous-effectifs et de capacité d'enquête limitées. En conséquence, les gangs commettent leurs crimes en toute impunité et la population, qui est laissée sans perspective de protection dans la dénonciation, n'a souvent d'autres choix que quitter son domicile pour essayer de trouver refuge ailleurs (HRC, 23 avril 2018). Les sources consultées par l'EUAA rapportent que des crimes comme les disparitions ne sont que rarement signalés aux autorités. Ceci serait notamment dû aux faits que l'impunité est fréquente, qu'il est rare pour un-e citoyen-ne d'obtenir une protection, que les gangs intimident les victimes et que celles-ci ont peur d'être discréditées ou d'être stigmatisées comme des membres de gangs et des personnes délinquantes (EUAA, 10 mars 2022). Selon le HCR également, la police n'est pas considérée comme pouvant fournir une protection efficace contre les agissements des gangs, notamment en raison du fait que sa présence dans les quartiers affectés n'est que temporaire. Au mieux, la police permet d'escorter une personne menacée hors d'un quartier. Même les policiers qui vivent dans les quartiers menacés par les gangs ne sont pas à l'abri des assassinats chez eux ou sur le chemin du travail (HCR, mars 2016).

Collusion entre la police et les gangs. Les forces de sécurité sont infiltrées par les gangs. Large impunité pour les gangs. Les personnes qui se risquent à porter plainte sont intimidées et parfois tuées. Les plaintes et des informations sensibles peuvent être divulguées aux gangs par la police. Selon l'EUAA, des rapports font état de collaboration entre les gangs et la police et l'armée. Les gangs auraient infiltré les forces de sécurité. Ces dernières commettraient également des abus en toute impunité sans risque de poursuites (EUAA, 10 mars 2022). Selon le HCR, malgré l'existence d'un cadre juridique pour lutter contre les gangs, ces derniers bénéficient d'une large impunité favorisée par les faiblesses et la corruption des forces de sécurité. Les gangs auraient infiltré les forces de sécurité, y compris certaines unités d'élite, et seraient ainsi avertis des opérations les visant. Les forces de sécurité locales auraient également parfois tendance à prendre parti dans les conflits opposant des gangs rivaux et ne seraient ainsi pas considérées comme impartiales. L'impunité en matière d'enquête et de poursuites pénales serait favorisée par l'intimidation et la violence exercée à l'encontre des plaignants. En conséquence, les victimes sont généralement réticentes à dénoncer les crimes commis par les gangs de peur de subir des représailles. Une enquête citée par le HCR indique que 84 % des entreprises victimes d'extorsion n'ont pas porté plainte en raison des menaces des gangs et du fait que les dénonciateurs-trices finissent généralement par être tué-e-s. En effet, lorsqu'elles sont déposées, les plaintes sont souvent renvoyées aux gangs qui se chargent d'exercer des représailles sur les plaignant-e-s (HCR, mars 2016). Pour *Vickie Knox* également, les forces de l'ordre sont sujettes à la corruption et elles sont parfois infiltrées par les gangs. Les victimes n'ont souvent pas confiance dans les autorités et craignent des représailles des gangs si elles portent plainte. Cette crainte est exacerbée par la peur que des agents de l'État divulguent des informations aux gangs (*Vickie Knox*, octobre 2019).

3.3 Programme de protection des témoins

Programme de protection des témoins en place depuis 2006. Environ 1000 personnes par année en bénéficient. Selon le HCR, depuis 2006, il existe un programme de protection et de soutien aux victimes et aux témoins de crimes. Environ 1000 personnes par année sont prises en charge par ce programme (HCR, mars 2016). *Robert Kirkland*, un expert en affaires de sécurité dans les Amériques, indique que c'est l'unité technique exécutive (Unidad Técnica Ejecutiva, UTE) qui est chargée de diriger et de coordonner le programme de protection des témoins. En 2020, 903 personnes participaient au programme (*Robert Kirkland*, 17 mai 2021). Citant le rapport du Rapporteur spécial sur les droits de l'homme des personnes déplacées, le *UK Home Office* indique que le programme de protection des témoins prévoit des escortes policières, un logement temporaire ou un changement de domicile et d'emploi, mais également un soutien en matière de soins de santé, un soutien psychologique et des services juridiques (*UK Home Office*, février 2021). Pour *Robert Kirkland* cependant, le programme s'engage essentiellement à protéger les informations personnelles de la personne qui témoigne, mais il ne prévoit pas d'autre forme d'assistance comme des gardes armés ou des réfugiés (*Robert Kirkland*, 17 mai 2021).

Seuls les témoins importants seraient acceptés. La protection cesse à la fin du procès. Pour Ainhoa Montoya, directrice du Centre d'études latino-américaines et caribéennes (CLACS), citée par le *UK Home Office*, seules les personnes qui sont impliquées en tant que témoins dans des affaires pénales peuvent bénéficier du programme de protection des témoins. Une fois admises, ces personnes sont séparées de leur famille et séquestrées dans une maison, protégées par des officiers de police. Toutefois, cette protection prend fin à la fin du procès. Un autre problème est qu'en raison de fonds limités, seuls les témoins importants sont acceptés (*UK Home Office*, février 2021). *Robert Kirkland* souligne également cette lacune, indiquant que seules les personnes qui témoignent contre des criminels importants sont admises dans le programme (*Robert Kirkland*, 17 mai 2021).

Efficacité limitée du programme de protection des témoins. Des témoins protégés peuvent être retrouvés et tués par les gangs avec la complicité de la police. D'après *Robert Kirkland*, la manque de financement du programme fait que les témoins restent vulnérables aux menaces des criminels qu'ils dénoncent (*Robert Kirkland*, 17 mai 2021). Le HCR estime que la protection offerte par le programme de protection des témoins est limitée, avec dans bon nombre de cas des témoins qui ont fini par être traqués et finalement tués par les groupes criminels (HCR, mars 2016). Ainhoa Montoya, citée par le *UK Home Office*, rapporte également que dans un certain nombre de cas, des témoins protégés ont malgré tout été retrouvés, avec la complicité des officiers de police ou de fonctionnaires corrompus, et assassinés par des gangs. L'Internal displacement monitoring centre (IDMC), cité par le *UK Home office*, estime également que les logements ne sont pas toujours sûrs et peuvent être découverts par les groupes criminels (*UK Home Office*, février 2021). L'expert *Robert Kirkland* rapporte qu'en septembre 2019, la directrice de l'UTE, Kenia Elizabeth Melgar de Palacios a admis être consciente que certains témoins avaient été tués, mais assurait qu'ils représentaient des « cas isolés ». Toutefois, selon l'Agence nationale salvadorienne unie pour les réfugiés, citée par l'expert, la vie des témoins n'est pas garantie par le programme. Certains témoins auraient continué à recevoir des menaces et d'autres auraient été attaqués et tués. L'expert rapporte qu'en 2017 les assistantes juridiques Marilín Lisseth Carballo et Estela Zavala du tribunal d'instruction salvadorien ont été reconnues coupables d'avoir révélé des informations confidentielles de témoins protégés au gang M18 (*Robert Kirkland*, 17 mai 2021).

Les membres de famille des témoins ne sont pas inclus dans le programme de protection et restent vulnérables aux représailles des gangs. Filles et femmes également exposées aux abus des officiers de police. Selon *Robert Kirkland*, le conjoint, partenaire ou membre de la famille du témoin peut également bénéficier d'une protection (*Robert Kirkland*, 17 mai 2021). Cette information est toutefois contredite par le *UK Home Office* qui cite un rapport d'IDMC, selon lequel le logement proposé aux témoins n'est souvent pas approprié car il ne prévoit pas d'accueillir les membres de la famille des témoins qui peuvent également subir des représailles. Une autre source consultée par le *UK Home Office* confirme que les membres de la famille d'un témoin ne sont pas protégés et sont ainsi vulnérables aux mesures de représailles des gangs. Par ailleurs, les filles et femmes qui participent à ce programme peuvent également subir des abus, tels que du harcèlement ou des agressions sexuelles de la part des officiers de police censés les protéger (*UK Home Office*, février 2021).

Face au manque de protection et à la longueur des enquêtes et procédures, de nombreux témoins abandonnent le programme. Selon le *Département d'État américain* (USDOS), une réforme du Code pénal en octobre 2022 a rendu plus facile pour les victimes de certains crimes de témoigner par vidéo ou par d'autres moyens avant le procès. Toutefois des experts locaux consultés par USDOS ont affirmé qu'en raison du manque de mesures de sécurité adéquates et de la longueur des enquêtes et procédures, de nombreuses victimes ont décidé de se retirer du programme avant la fin des procès. D'autres ont abandonné en raison de l'insuffisance de l'aide économique offerte dans le cadre du programme (USDOS, 15 juin 2023).

3.4 Système judiciaire

Un pouvoir judiciaire qui manque d'indépendance et qui est inefficace et corrompu. Des juges accusés de corruption et de collusion avec des groupes criminels. Taux de condamnation inférieur à 5 %. Selon le *Comité des droits économiques, sociaux et culturels* (CESCR), il existe un manque d'indépendance entre le pouvoir judiciaire, exécutif et législatif. Le Comité est en particulier préoccupé par le fait que des juges de l'ancienne chambre constitutionnelle ont été révoqués sans que les procédures régulières ou le principe de l'inamovibilité des juges soient respectés (CESCR, 9 novembre 2022). Citant USDOS, le CRS indique que malgré des mesures prises par le gouvernement pour réduire la corruption, l'impunité persiste. Certains juges se sont avérés sujets à la corruption et coupables de collusion avec des groupes criminels (CRS, 1^{er} juillet 2020). Selon le HCR, le système judiciaire est particulièrement inefficace et corrompu, ce qui serait illustré par des taux d'impunité très élevés et un taux de condamnation inférieur à 5 %. Cette impunité bénéficie particulièrement aux trafiquants de drogue de haut niveau. Des juges spécialisés dans la lutte contre le crime organisé auraient reçu des pots-de-vin de la part de groupes criminels (HCR, mars 2016).

4 Sources :

AI, 3 avril 2023 :

« Depuis l'instauration de l'état d'urgence et l'adoption d'un grand nombre de réformes supposées répondre au phénomène des gangs, en mars 2022, **les autorités salvadoriennes se**

sont rendues coupables de violations des droits humains graves et systématiques, a déclaré Amnesty International lundi 3 avril 2023.

*La politique menée par le gouvernement s'est traduite par plus de 66 000 arrestations, en majorité arbitraires, des mauvais traitements, y compris des actes de torture, des violations flagrantes des procédures, des disparitions forcées et la mort d'au moins 132 personnes qui se trouvaient aux mains de l'État et qui, au moment de leur décès, n'avaient été reconnues coupables d'aucune infraction pénale. Pour que de telles violations des droits humains soient possibles, il aura fallu la **complicité des trois pouvoirs de l'État, la mise en place d'un cadre juridique contraire aux normes internationales en matière de droits humains, en particulier concernant la procédure pénale, et une absence de mesures destinées à éviter que des violations systématiques des droits fondamentaux ne soient commises pendant l'état d'urgence.** [...]*

*Amnesty International considère que **le caractère systématique des graves violations des droits humains commises dans le cadre de l'état d'urgence est attesté par la forme généralisée et soutenue dans le temps que prennent ces violations, par un niveau d'organisation et de planification faisant appel aux trois branches de l'état, par l'impunité et l'absence d'obligation de rendre des comptes, par l'absence de transparence et d'accès à l'information, et par la large criminalisation de la pauvreté, considérée comme un facteur de discrimination.** [...]*

***Certaines garanties de procédure, telles que la présomption d'innocence ou le droit à la défense, sont suspendues depuis un an, ce qui a permis la détention arbitraire et l'emprisonnement de plus de 66 000 personnes en un temps record.** Amnesty International a recueilli des informations concernant une cinquantaine de cas, dans lesquels elle a pu mettre en évidence des pratiques de détention et d'incarcération arbitraires à grande échelle. [...]* »
Source: Amnesty International (AI), Salvador. Un an après l'instauration de l'état d'urgence, les autorités commettent des violations des droits humains systématiques, 3 avril 2023: www.amnesty.org/fr/latest/news/2023/04/el-salvador-one-year-into-state-of-emergency-authorities-are-systematically-committing-human-rights-violations/.

CESCR, 9 novembre 2022 :

*« 10. The Committee is concerned about reports that, **despite the proclamation of principles safeguarding judicial independence in the Constitution and the Organic Act on the Judicial System, there is a lack of independence, in practice, between the judicial, executive and legislative branches.** In particular, the Committee is concerned about the dismissal of the judges of the former Constitutional Chamber, which was carried out without respect for due process or the principle of security of tenure for judges. It is **also concerned about the amendments to the Judicial Service Act and the Organic Act on the Attorney General's Office adopted on 31 August 2021, which are incompatible with the principle of independence of the judiciary and the Attorney General's Office.** [...]*

National human rights institution

*12. While the Committee acknowledges the important work of **the Office of the Human Rights Advocate, it is concerned about reports that the Office is gradually losing its independence and failing to respond to human rights violations in the State party.** » Source: Committee on Economic, Social and Cultural Rights (CESCR), Concluding observations on the sixth*

periodic report of El Salvador, 9 novembre 2022, p.3: www.ecoi.net/en/file/local/2087595/G2258132.pdf.

CRS, 1^{er} juillet 2020 :

« El Salvador has a long history of weak institutions and corruption, with successive presidents and legislatures allocating insufficient funding to criminal justice institutions. With a majority of the National Civilian Police (PNC) budget devoted to salaries, historically there has been limited funding available for investing in training and equipment. Corruption, weak investigatory capacity, and an inability to prosecute officers accused of corruption and human rights abuses have hindered performance. A lack of confidence in the police has led many companies and citizens to use private security firms and the government to deploy soldiers to perform public security functions. President Bukele has increased police salaries and sought, but did not receive, legislative approval of a loan to provide new equipment for police and soldiers.

The State Department maintained in 2019 that “impunity persisted despite government steps to dismiss and prosecute” some officials who had committed abuses, partially due to corruption in the judiciary. Whereas some judges and courts in El Salvador have issued significant decisions, particularly in opening civil-war era cases of human rights abuses, others have proven subject to corruption. From January to August 2019, the Supreme Court heard cases against 110 judges accused of various irregularities, including collusion with criminal groups. At President Bukele’s direction, auditors have been examining the “reserved spending account” that Bukele’s predecessors used to divert public funds for their own priorities. » Source: Congressional research service (CRS), El Salvador: Background and U.S. Relations, 1er juillet 2020, p.8: <https://sgp.fas.org/crs/row/R43616.pdf>.

EUAA, 10 mars 2022 :

« The main criminal gangs in El Salvador are the Mara Salvatrucha (MS-13) [Maras] and 18th Street Barrio/Barrio 18 [with two factions the Revolucionarios and Sureños]. MS-13 is approximately double the size of Barrio 18. These gangs are involved in criminal activities such as drug trafficking, kidnapping, human smuggling, sex trafficking, murder, assassinations, racketeering, blackmail, and extortion. MS-13 and Barrio 18 are described as violent and well-armed, and are reported to be the largest contributors to the homicide numbers in El Salvador. There are approximately 60 000 gang members active in El Salvador, however other sources report there are tens of thousands, but there is no reliable number. If collaborators and family members of gang members are included as part of the gang’s network, the figure rises to 400 000. The El Salvadoran gangs, like MS-13 and Barrio 18 were designated as a terrorist group by El Salvador’s courts in 2017. The gang leadership is incarcerated and operate their activities from within prisons. However, International Crisis Group remarked in July 2020 that the gangs have evolved with a new generation of gang leadership emerging on the street which has less reliance on the incarcerated leadership, with which does not always ‘see eye to eye’. [...]

3. Territorial presence and control by MS-13 and Barrio 18

MS-13 and Barrio 18 gangs are dispersed throughout El Salvador, and operate in 94 percent of the country’s municipalities, as each gang member has a network of at least 6

collaborators or family members. According to FP, 'gangs have exerted control over entire communities for decades through extortion, disappearances, and frequent killings' and 'control every facet of life'. Human Rights Watch stated in its World Report 2022, published 13 January 2022, gangs exert control over 'parts of the territory' and have territorial control over some neighbourhoods and extort residents throughout the country.' International Crisis Group stated that since 2014, gangs operate by dividing up territory and therefore do not fight one another directly for territory to the same extent as in the past; they are more focused on the administration of their territory and preventing members from 'crossing "invisible borders"' into rival areas. Gangs control access to their territories and those living in one area cannot enter the territory of another, even by public transit. Gangs also checked government issued ID upon entry into territory and 'if gang members discovered that a person lived in a rival gang's territory, that person risked being killed, beaten, or denied entry into the territory.' [...]

7. State protection for victims of gangs and state violence

7.1 Investigations and prosecutions

Sources report that crimes such as disappearances are underreported to authorities. FESPAD's study found that underreporting was due to factors such as high levels of impunity and lack of protection for citizens, increasing power of gangs to intimidate victims, inaction of entities that deal with targeted crime, fear of being discredited, the state's 'invisibilising' of the crime of disappearances, and fear of stigmatization as gang members and delinquents.

According to Foreign Policy, reporting in March 2021, 'gang control has become more entrenched. Homicides are just one way that gangs exert control on communities. They show their force through extortion, threats, and sexual violence as well. Even though crime statistics have go[ne] down, there is little evidence - such as fewer active gang members on increased entry into the formal workforce by former gang members - showing government police have actually dismantled the structures that enact this violence.'

USDOS similarly stated that in many neighbourhoods, 'gangs targeted certain persons' and arbitrarily and unlawfully interfered with the privacy of their lives, noting, that the 'efforts of the authorities to remedy these situations were generally ineffective'. There is no national database for missing persons. Media reported that according to government statistics, there were 200 unsolved disappearance cases pending with authorities in 2020, compared to 488 in 2021. There is no monitoring system or adequate services to provide for victims of violence who have been displaced within the country. In March 2021, the Attorney General's office stated that 42 members of the Barrio 18 were found guilty of various crimes such as homicide, extortion, drug running, disappearance and illegally restricting free movement, and given sentences ranging up to 472 years in prison.

7.2 State integrity

There have been reports that police and military have collaborated with gangs whose members have permeated the ranks of the security forces. Sources also report that the government and security forces carried out abuses with impunity, and the civilian authorities 'did not maintain effective control' over such forces. Relating to the prosecution of state security forces' abuses, OUDH noted that there are 'institutional weaknesses that exist in the administration of justice in general, and in justice operators in particular,

which result in deficient investigative processes' as well as long processing times and a context of 'high impunity'.

Recent statistics report on the prosecution of abuses by state forces:

- **The OUDH study found that between 2015-2020, 92 % of cases where police or military officers have been prosecuted for violent deaths have been dismissed and only 2% of cases of those charged resulted in a conviction.**

- **According to the Attorney General Public Prosecutor's Office, there were 924 complaints and accusations against the national police made between 1 January 2017 and 15 March 2021, for offences such as homicide (419 complaints), fraud (98), deprivation of liberty (98), and torture. Of all 924 complaints, 12 (2 %) were found guilty and convicted. »**

Source: EUAA, El Salvador: Crime levels, including homicides, disappearances, kidnapping and extortion; territorial presence and activities of MS-13 and Barrio 18 gangs; armed confrontations between gangs and with authorities; state response to gangs; state protection for victims (1 January 2019 – 9 March 2022), 10 mars 2022, p.2, 4-5, 9-10: www.ecoi.net/en/file/local/2069464/2022_03_11_EUAA_COI_Query_Response_El_Salvador_Security_Situation.pdf.

HRC, 23 avril 2018 :

« 18. The Special Rapporteur was informed of the devastating and extraordinary impact of generalized and, in particular, gang-related violence on individuals, families and communities. Gangs control or dominate some, predominantly poor, territories and populations through threats, intimidation and violence and a culture of violence that infects whole communities and peoples' everyday activities, movements, interactions and relationships. Killings are commonplace and extortion of individuals and small businesses is widespread and seen as a "tax" on local communities by the gangs. Many of those affected by extortion live in gang-affected neighbourhoods and consider that they simply have no choice but to pay or to flee their homes and neighbourhoods. Under threat from the gangs, individuals or whole families would simply disappear, leaving their homes abandoned or selling them cheaply if they could.

19. The extent of violent crime is such that there is often no investigation carried out into even the most serious crimes, including homicides, resulting in a general lack of faith in law enforcement and the criminal justice system. The criminal conviction rate in El Salvador is less than 5 per cent. Such a situation indicates a deeply worrying law enforcement deficit and demonstrates that the police and the investigation service are overwhelmed and underequipped to respond to the challenges they face, including the extraordinary levels of homicide. It also creates and perpetuates an environment and society in which gangs can flourish and function with almost absolute impunity from prosecution for even the most egregious crimes. This leads individuals and families, who see no prospect of remedy or protection in reporting violence to the authorities, to see their only option as fleeing their homes and communities to find safety. » Source: Human Rights Council (HRC), Report of the Special Rapporteur on the human rights of internally displaced persons on her visit to El Salvador, 23 avril 2018, p.7: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/116/64/PDF/G1811664.pdf?OpenElement>.

IRB, 2 décembre 2022 :

« According to sources, the population of El Salvador is approximately 6.5 million people (Al Jazeera 28 Mar. 2022; US 14 Nov. 2022; World Bank 2021). **Sources indicate that MS-13 [Mara Salvatrucha] and Barrio 18 have approximately 70,000 (Al Jazeera 12 Apr. 2022) or approximately 60,000 gang members between them in El Salvador (InSight Crime 15 Sept. 2020). Sources state that gangs operate in 94 percent of the country's departments [1] (Assistant Professor of security studies 13 Oct. 2022) or that the maras (gangs), including MS-13, are "active in 94 per cent of El Salvador's 262 municipalities" (International Crisis Group 26 Nov. 2018, 3).**

According to the Council on Foreign Relations (CFR), an independent and nonpartisan US-based membership organization and think tank that focuses on foreign policy (CFR n.d.), the homicide rate in El Salvador "reach[ed] its lowest level in two decades" in 2019 (CFR 4 May 2022). Freedom House's annual report states that while gang-related crime and violence "remain grave problems" in El Salvador, 2020 and 2021 "saw the lowest homicide rates in years" (24 Feb. 2022, Sec. F3). Al Jazeera reports that El Salvador "registered 1,140 murders in 2021," which is an "average of 18 deaths per 100,000 inhabitants," compared to 103 homicides per 100,000 inhabitants in 2015 (28 Mar. 2022). [...]

Sources state that since 2019, President Bukele has implemented "extraordinary measures" and a "mano dura" [2] policy to combat gangs in El Salvador (Assistant Professor of security studies 13 Oct. 2022) or that President Bukele has "reverted to the same mano dura or repressive tactics" as the previous governments since coming into office in 2019 (The Guardian 5 Apr. 2022). **International Crisis Group notes that the government of El Salvador has "turned to heavy-handed tactics to respond to surges of gang violence in the past, but none compares to the present crackdown in either intensity or duration" (5 Oct. 2022, i). Freedom House indicates that authorities in El Salvador "have pursued a harsh, militarized response to the country's powerful criminal gangs, resulting in extrajudicial killings and other abuses" (Freedom House 24 Feb. 2022, overview). According to InSight Crime, a think tank and media organization that studies organized crime in the Americas (InSight Crime n.d.), President Bukele has "authorized security forces to use 'lethal force' against gang members" for "'self-defense or for the defense of the lives of Salvadorans'" (30 Apr. 2020).**

Al Jazeera states that President Bukele is using "mass detentions" to "clea[n] up the streets of El Salvador" (21 Apr. 2022). According to sources, prisons in El Salvador are operating at "several hundred percent" capacity (Assistant Professor of security studies 13 Oct. 2022) or "over double the penitentiary system's estimated capacity" (InSight Crime 16 May 2022). **The Prison Policy Initiative (PPI), a non-profit and non-partisan advocacy organization that researches and documents "mass incarceration" (PPI n.d.), indicates that in 2021, El Salvador had the world's second highest incarceration rate with 562 per 100,000 people (PPI Sept. 2021). Al Jazeera notes that according to a researcher from Human Rights Watch (HRW) who has documented "about 50 cases of human rights or due process violations,"**

[p]olice first enter poor neighbourhoods with a known gang presence and round up residents, mostly young men, and then take them to the police station, where their family members are often allowed to see them briefly. Then they are sent into the penitentiary system, which is where they often get 'lost' Family members do not know which prison their loved ones have been sent to and inquiries through the official channels come up blank. (Al Jazeera 21 Apr. 2022)

Agence France-Presse (AFP) reports that in April 2022, Congress in El Salvador approved a request by President Bukele to "criminalize gang-related messages in the media" (6 Apr. 2022). **According to a penal code reform approved by the Legislative Assembly (Asamblea Legislativa), the unlawful production and reproduction of [translation] "messages, signs, names, propaganda, or any form of written expression alluding to" gangs will carry a sentence of 10 to 15 years** (El Salvador 2022a, Art. 1). According to a press release from the El Salvador presidency, **the penal code was amended to increase prison sentences for gang members** (El Salvador 31 Mar. 2022). **Sources note that maximum prison sentences increased "from nine to 45 years," and that the government also "raised maximum prison sentences for children and will allow teenagers to be tried as adults for the most serious offenses, and serve their sentences in adult prisons rather than juvenile detention facilities"** (AFP 6 Apr. 2022) or that "prison sentences for gang membership were increased" from a "maximum of nine years to up to 45 years for leaders," while the "penalties against minors were also increased significantly" (Germany 4 Apr. 2022, 3). [...]

Sources report that in March 2022, El Salvador's parliament approved a state of emergency (AP 28 Mar. 2022; BBC 27 Mar. 2022) that "temporarily suspended some constitutional protections," including "restrictions on free assembly," "the right to be informed of the reason for arrest and access to a lawyer upon being detained, in addition to allowing for administrative detention of more than 72 hours" (Al Jazeera 28 Mar. 2022). Al Jazeera notes that President Bukele also "order[ed]" a 24-hour lockdown of gang members in their prison cells (28 Mar. 2022). According to sources, President Bukele "ordered reductions in food for prison inmates" (AP 28 Mar. 2022) or announced that "food for gang inmates would be rationed to feed the new detainees" (The Guardian 5 Apr. 2022). Sources state that "for the first time," rival gang members were "incarcerated together" in prisons (The Guardian 31 Oct. 2021) or that El Salvador has [translation] "adopted an unprecedented measure: mixing gang members" from MS-13 and "the two factions" of Barrio 18 in the same cells (Noticias Telemundo 14 May 2020).

Sources indicated in October 2022 that the state of emergency was "still in force" in El Salvador (Independent researcher 17 Oct. 2022) or was "extended" on 15 October 2022 and that "more than 55,000" individuals have been arrested since the state of emergency was first declared (Al Jazeera 15 Oct. 2022). » Source: Immigration and Refugee Board of Canada (IRB), El Salvador: Law enforcement efforts against gangs, including anti-gang legislation and arrests since a state of emergency was declared in March 2022 (2019–November 2022) [SLV201162.E], 2 décembre 2022: www.ecoi.net/en/document/2086823.html.

Robert Kirkland, 17 mai 2021 :

« *The purpose of this post is to look at the Salvadoran Witness Protection program and evaluate who it serves and how effectively it safeguards those who turn evidence against gangs or other criminal elements in El Salvador. In immigration hearings, Salvadorans facing removal and who fear retribution from criminals they turned evidence against often need to justify the inadequacy of police or other legal protections in order to qualify for cancelation of removal under the Convention Against Torture. **Based on the current status of the Witness Protection Program in El Salvador, one cannot help but conclude that it is inadequate and fails the majority of its citizens.***

The Special Law for the protection of victims and witnesses was issued by the Congress of El Salvador in 2006. The purpose of this law is to regulate protection and care provided to victims, witnesses and anyone else who is in a situation of risk or danger as a result of their intervention in the investigation of a crime or in a judicial process. In 2007 the President of El Salvador issued the follow-on Regulation for the Special Law for the protection of victims and witnesses. This regulation develops and facilitates the application of the regulations contained in the Special Law for the Protection of Victims and Witnesses.

Enforcement of the law is under the direction and coordination of the Executive Technical Unit (Unidad Técnica Ejecutiva, UTE) which aims to provide protection to witnesses in the criminal process. The protection of the program can be extended to the spouse, domestic partner, family members, or other people related to the witness, who, by virtue of their testimony, are at risk. As of 2020, there are 903 persons in the program.

In September of 2019, the Director of UTE, Kenia Elizabeth Melgar de Palacios and Salvadoran Attorney General, Raúl Melara, acknowledged that they face financial problems to expand the protection to victims and witnesses. Melgar de Palacios was aware that the homicides of witnesses occur, however, she assured the newspaper La Prensa Gráfica that they are "isolated cases" within a protection program that "serves as an example in the region." However, according to the Salvadoran United National Refugee Agency, the program does not guarantee the lives of witnesses. Sources indicated that some witnesses and victims of crime who were in the witness protection program continued receiving threats and some were attacked and killed.

A major shortcoming of the program is that those who testify against low level gangs or criminal elements are often excluded from the program. Even for those in the program, the program only requires the authorities to protect the personal data of people who are going to testify in a case, but does not establish giving other types of protection, such as armed guards or safehouses. Moreover, there have also been arrests of officials who reveal confidential information for those in the program. For example, Legal Assistants Marilín Lisseth Carballo and Estela Zavala of the Salvadoran Investigating Court were convicted of revealing confidential information from protected witnesses to the M18 gang in 2017.

Conclusion

Based on the evidence, the majority of Salvadorans who report low level gang or other crimes in El Salvador do not even fall under the Witness Protection Program—which is most often reserved for those who report higher level criminals. Even for those Salvadorans "lucky" enough to fall under the program, the government has failed to adequately fund and staff the program, resulting in witnesses being harmed by the same criminals they are supposed to be protected from. Overall, there is much work to be done by El Salvador to improve their protection of witness but at this point it fails their citizens. »
Source: Robert Kirkland, Salvadoran Witness Protection and Its Shortcomings, 17 mai 2021 : www.linkedin.com/pulse/salvadoran-witness-protection-its-shortcomings-kirkland-ph-d-?utm_source=share&utm_medium=member_android&utm_campaign=share_via.

UNHCR, mars 2016 :

« [...] **Despite the existence of this legal framework, weaknesses and corruption in the Salvadorian security forces and the judiciary reportedly contribute to creating a high level of impunity for crimes in El Salvador.** As early as 2004, transportista smuggling structures and gangs had reportedly penetrated the State through the police force. Bribes are reportedly also paid by the smuggling structures to political operators to guarantee the free operation of such criminal networks and the free passage of their merchandise. Policemen who investigated high-level drug smugglers have reportedly had their investigations shelved and were instead investigated themselves on minor charges by the Attorney General. **The gangs reportedly have their own infiltrators in the police and the military, including certain elite units and the General Staff, who warn them about anti-gang operations and with access to intelligence, weapons and uniforms.** Between 2009 and 2015, the PNC was the State institution about which the highest number of complaints was made regarding human rights abuses. In 2014 alone, 900 police officers were reported to have been sanctioned for misconduct, with this figure likely representing only a fraction of those who committed abuses. **It is reported that overall public opinion in El Salvador tends to view the police as driven by aggressive and vindictive motives rather than by professional ethics. Indeed, individual officers and entire local forces within the police reportedly sometimes take one or the other side in disputes between rival local gangs.** Moreover, it is reported that neither the police nor any other State authorities have investigated recent murders carried out by uniformed and heavily armed death squads that give the appearance of having official links.

In 2015, there was a small increase in the number of prosecutions of gang members compared to 2014. Proportionally many more children were prosecuted for gang-related crimes in 2015 than in the previous year. **In general, though, intimidation and violence against complainants reportedly continues to contribute to a climate of impunity from criminal investigation and prosecution. Victims are particularly averse to reporting crimes perpetrated by gangs for fear of reprisals. For example, a survey indicates that 84 per cent of businesses that were subjected to extortion did not lodge a complaint with the police or other authorities due to threats by gangs and the gangs' practice of killing those who do report them to the authorities. Complaints to the police about gang extortion are reportedly often relayed back to the gangs, which then exact severe retribution on the complainants.**

It is reported that the police – even the elite Anti-Gang Unit in high-profile cases – are usually not seen as offering a sufficient form of protection for those residents who are threatened by gangs, since their presence is only temporary and the gangs will return once the police move on after a few hours or days. Reports indicate that often the most that police are able to do is to provide an escort out of the neighbourhood for those who have received threats. Even police officials who live in areas where the gangs operate are reported to acknowledge their fear at the inability of the State to protect them from assassination in their homes or on the way to work.

The judicial system is reported to be particularly inefficient and subject to corruption, a practice that in turn contributes to high levels of impunity for crimes in El Salvador, where the criminal conviction rate reportedly is less than 5 per cent. In 2012 alone, there were reports of ongoing investigations into complaints against 487 of the 600 serving judges in El Salvador. The Salvadorian penal system is reported to have a history of particular weakness when it comes to prosecuting high-level drugtraffickers. Even specialized anti-

mafia judges have reportedly been arrested on charges of receiving bribes from organized criminal groups. In 2006, El Salvador adopted a law that provides for protection and support to victims and witnesses of crimes. Each year, the programme created by this law reportedly supports around 1000 victims or witnesses, about 50 of whom are 'protected witnesses' (i.e. criminal turncoats), through measures such as the offer of a safe house or a sporadic subsistence stipend. However, there are well-documented examples of these witnesses, especially the protected witnesses, being tracked down and killed by gangs and other organized criminal groups, including after trial judges allowed or ordered their identities to be revealed during trial proceedings. Fear, shame and lack of confidence in what is generally considered an ineffective and unsupportive justice system reportedly come together to prevent many women from reporting domestic or gang violence. Moreover, a particular issue reported to exacerbate women's vulnerability is the fact that the penal code in El Salvador prohibits abortion in all circumstances such that, between, 2000 and 2011, it is reported that 129 women were prosecuted for crimes relating to abortion, 23 of whom were convicted of abortion and 26 of homicide. By contrast, despite the fact that Salvadorian women, men and children are at risk of trafficking (for forced labour as well as sexual exploitation), the police in El Salvador are reported to have made only 96 arrests for human trafficking between 2012 and 2015, of which only 35 cases ended in conviction.

Conditions in the prison system are reported to be harsh and life threatening due to gross overcrowding, unhygienic conditions, and gang activities. While the prisons are built to hold around 8,500 persons, the current prison population is reported to be in excess of 32,000, of whom 74 per cent are convicts and 26 per cent are awaiting trial, with homicide as the most common offence. Around 38 per cent of the current prison population report being members of a gang. Even though members of the MS and B-18 are sent to separate prisons to minimize confrontations, violence in the prisons continues. In August 2015, 14 members of the B-18 Revolucionarios faction were reportedly murdered in an internal purge in Quezaltepeque prison.

In January 2015, the new government outlined its five-year US\$2.1 billion 'Secure El Salvador Plan' (Plan El Salvador Seguro), which includes an increased focus on the country's 50 most violent municipalities and also emphasizes crime prevention and reform of the criminal justice system. However, although the plan was officially launched in July 2015, its implementation is reported to remain contingent on legislative approval of security budget proposals. The Sánchez Ceren administration also proposed a gang rehabilitation law in April 2015 that would be the first of its kind in El Salvador; it was presented to the Legislative Assembly in October 2015. However, in the current political climate this proposed law is reportedly expected to face serious challenges in gaining the requisite political backing. [...]

One of the reported reasons for multiple displacements is that displaced persons often have little choice but to relocate to areas that are also controlled by gangs. If they move to an area controlled by the same gang, their problems are likely to follow them to the new location; if they move to an area controlled by a different gang, they are likely to be challenged by this gang as rival gangs usually do not accept persons coming from areas controlled by other gangs settling in their home territory. Where gangs and other criminal groups have serious problems with a person or believe that the person in question could represent an ongoing threat, they are reported to make efforts to try and track the person down even after they have fled their home. Moreover, because persons who flee their homes due to threats or gang-related violence often have to do so rapidly, they usually

incur substantial economic losses as they have little time to make arrangements to sell or rent their houses and businesses or even to collect all of their belongings. There is no government programme for assisting displaced persons and so each new displacement is reported to exacerbate the downward spiral in their living conditions. [...]

Gangs in El Salvador reportedly perceive a wide range of acts by residents of the area under the gang's control as demonstrating 'resistance' to their authority. Acts commonly construed as challenging a gang's authority reportedly include but are not limited to: criticizing the gang; refusing a request or 'favour' by a gang member; arguing with or looking mistrustfully at a gang member; refusing to participate in gang activities or to join the gang; rejecting the sexual attention of a gang member; having (perceived) links with a rival gang or a zone controlled by a rival gang; refusing to pay extortion demands; wearing certain clothing, tattoos or other symbols; participating in civil, religious or other organizations viewed as undermining the gang's authority; and passing on information about the gang to rivals, authorities or outsiders. In some cases, a stranger accidentally turning up uninvited in a gang zone is reportedly taken as a serious affront to the gang's authority.

*Persons who live in localities that serve as 'invisible' boundaries between the territories of rival gangs, or where the control of one gang is being disputed by another gang, also face a heightened risk of being perceived (sometimes by both sides) as having links with the rival gang. **The nature of retaliation for perceived acts of 'resistance' or 'disloyalty' by inhabitants is reported to vary to some degree depending on the 'character' of the local gang and the form of 'resistance' involved. However, most perceived contraventions of these gang-imposed rules are dealt with severely: individuals whom the gang members suspect of resisting their authority are reported often to be killed without prior warning, although sometimes the killing is reportedly preceded by threats and/or other attacks against the person concerned.** Religious leaders, and other formal and informal community leaders, who represent an alternative source of authority to the gangs and who oppose them, or are perceived by the gangs as doing so, are equally at risk of violent retaliation. Since the breakdown of the gang truce, and particularly throughout 2015, the gangs have reportedly escalated their use of extreme violence against the local population to unprecedented levels. [...]*

***Where the agents of persecution are non-State agents, consideration must be given to whether the persecutor is likely to pursue the claimant in the proposed area of relocation. Considering the small territorial size of El Salvador, and given the ability of the gangs and other organized criminal groups to operate country-wide, and indeed internationally – both independently and as part of international criminal networks – a viable IFA/IRA is unlikely to be available to individuals at risk of being pursued by such actors.** It is particularly important to note the operational capacity of certain organized structures, particularly the MS and B-18 and the larger smuggling structures, to carry out attacks in any part of El Salvador, irrespective of territorial control of the specific zone. Further consideration should be given to: (i) the reach and ability of organized criminal networks to trace and target individuals, both in rural areas and in urban centres, including in the capital city of San Salvador, and including individuals who are covered by State-run protection programmes; (ii) the profile of the asylum-seeker and the existence of any reasonable grounds to believe that he or she will be traced and targeted; and (iii) the profile of the asylum-seeker and the existence of any reasonable grounds to believe that he or she will attract adverse attention and be targeted anew by organized criminal groups, especially gangs, that control the proposed area of relo-*

cation or which have a strong presence and operate there. » Source: UNHCR, Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from El Salvador, mars 2016, p.9-18, 22-26, 45: www.ecoi.net/en/file/lo-cal/1259547/1930_1458131708_56e706e94.pdf.

UK Home Office, février 2021 :

« 8.6 Witness protection

8.6.1 An extract from the book *'The Violence of Democracy: Political Life in Postwar El Salvador'* by Ainhoa Montoya published in 2018 stated:

'[E]ven though a state witness protection program exists, this can be accessed only by those who are involved as actual witnesses in criminal trials. While in the program, they are separated from their family and sequestered in a house under the protection of police officers. Their protection ends with the conclusion of the trial. Funds are so meager that only critical witnesses are accepted and, even then, there is evidence that some witnesses have been murdered by gangs and organized crime structures who have uncovered the whereabouts of witnesses through corrupt police officers or public officials'

8.6.2 The UNSR IDPs report 2018 noted ***'In 2006, the Supreme Court of Justice passed a Special Law for the Protection of Victims and Witnesses. While a positive step, it was noted that the Law focused on witnesses of crime and witness protection and did not include internally displaced persons as a unique category of victims requiring support, assistance and protection. The Law provides for measures to protect the identity and location of victims or witnesses; temporary or permanent protection through the provision of police escorts, temporary housing, or change of domicile or employment; and support measures to provide health care, psychological support and legal services, and help with housing, food, maintenance and employment. Urgent measures can be applied immediately and temporarily according to the risk, before a permanent solution is found.'***

8.6.3 A IDMC report of September 2018 noted that ***'the state provides victim and witness protection schemes', but opined that they '... tend not to include appropriate accommodation, particularly for family units to whom the individual's threat may extend. Nor is it necessarily secure from perpetrators.'***

8.6.4 Kids in Need of Defense reported that ***'Programs provide protection to only the victim/witness in most cases, leaving the victim's family members vulnerable to retribution by gangs. Women and girls receiving state "protection" may suffer further abuse by authorities. For example, in El Salvador, women and girls who have entered the state witness protection program have reported that security guards charged with protecting them have sexually harassed them, offering them improved living conditions in exchange for sexual favors, and in at least one case attempted to sexually assault a woman under their protection.'***

8.6.5 The USSD Trafficking in persons report 2020 stated: ***'Experts criticized the government's witness protection measures as insufficient, as they did not continue after the trial ended.'*** » Source: UK Home Office, Country Policy and Information Note El Salvador:

Actors of protection, février 2021, p.46-47: https://assets.publishing.service.gov.uk/media/60338cb18fa8f5432c277bf5/Country_policy_and_information_note_actors_of_protection_El_Salvador_February_2021.pdf.

USDOS, 15 juin 2023 :

« The government reported granting victim-witness protection measures, relative to individual safety risks, for participating victims and witnesses only through the duration of a trial. October 2022 reforms to El Salvador's penal code expanded provisions allowing all victims of certain crimes, including trafficking, to provide testimony by video or other means in advance of a trial. Local experts reported a lack of adequate security measures and lengthy investigations and prosecutions led many victims to cease participation before the conclusion of criminal justice processes. In addition, inadequate economic and livelihood assistance led victims and witnesses to leave the country in search of economic opportunity before authorities completed investigations. » Source: US Department of State (USDOS): 2023 Trafficking in Persons Report: El Salvador, 15 juin 2023: www.ecoi.net/en/document/2093619.html

Vickie Knox, octobre 2019 :

« Impunity: endemic, multi-causal and intersectional *Impunity is endemic in the region and most crimes are not prosecuted.* In order to understand the role of impunity as a root cause of displacement and violence in the NTCA, its multi-causal nature must be examined.

Firstly, there is a reluctance to report, which is based on several factors, including mistrust of the police and justice system and lack of confidence in the authorities to provide effective protection. This reluctance can also stem from the type of violence or crime experienced. Victims of gang violence fear reprisals and this is amplified by the fear of information being leaked to gangs by corrupt or coerced State agents. For victims of gender-based violence, hate crimes and sexual violence, this reluctance is compounded by fear of stigma, reprisals and more violence from their assailants, and those who do report are often re-victimised or derided by police. Reporting is also hindered by a lack of shelters for victims of domestic violence, the refusal to help people who appear to be a different gender from that given on their identity document, and a lack of recognition of same-sex relationships and the possibility of violence within them.

Secondly, there are significant practical challenges in delivering justice, including weak institutions, a lack of resources and capacity, and the sheer volume of cases. When crimes are reported to the authorities, reports may be refused or simply not processed and investigated. When investigations do take place, they are often lengthy and inefficient. All this is aggravated by a lack of effective witness protection and survivor support programmes.

Thirdly, State entities and law enforcement agencies have been corrupted and infiltrated by gangs, or may themselves extort and abuse people directly. This all contributes to a cycle of impunity in which crime can flourish and people's trust in authorities is further eroded, undermining access to justice and increasing the vulnerability of certain groups. States' failure to provide an effective response and protection contributes to displacement and affects its patterns – who goes and where they go – and people's need for

international protection. » Source: Vickie Knox, Gang violence, GBV and hate crime in Central America: State response versus State responsibility, octobre 2019: www.fmreview.org/sites/fmr/files/FMRdownloads/en/return/knox.pdf.

En tant que principale organisation d'aide aux personnes réfugiées en Suisse et faïtière des œuvres d'entraide et des organisations actives dans les domaines de l'exil et de l'asile, l'Organisation suisse d'aide aux réfugiés (OSAR) s'engage pour une Suisse qui accueille les personnes réfugiées, les protège efficacement, respecte leurs droits fondamentaux et humains, favorise leur participation dans la société et les traite avec respect et ouverture. Dans sa fonction, l'OSAR renforce et défend les intérêts et les droits des personnes bénéficiant d'une protection et favorise la compréhension de leurs conditions de vie. Grâce à son expertise avérée, elle marque le discours public et exerce une influence sur les conditions sociales et politiques.

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